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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the Federal Communications Commission  
Washington, DC 20554

In the Matters of: )  
)  
Changes to the Board of )  
Directors of the National Exchange )  
Carrier Association, Inc. )  
)  
Federal-State Joint board on )  
Universal Service )

CC Docket No. 97-21 /

CC Docket No. 96-45

COMMENTS SUBMITTED BY THE  
AMERICAN LIBRARY ASSOCIATION  
IN RESPONSE TO THE MAY 28, 1999  
FIFTH ORDER ON RECONSIDERATION in CC Docket No. 97-21  
ELEVENTH ORDER ON RECONSIDERATION in CC-Docket No. 96-45  
AND FURTHER NOTICE OF PROPOSED RULEMAKING

Submitted,  
June 22, 1999

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List A B C D E

## **I. Introduction**

The American Library Association (ALA) respectfully submits its comments in the above referenced proceeding. The American Library Association, founded in 1876, is the oldest and largest library association in the world. Its concerns span all types of libraries: state, public, school, academic, and special libraries. With a membership of more than 57,000 librarians, library trustees, library educators, friends of libraries, and other interested persons from every state, ALA is the chief advocate for the people of the United States in their search for the highest quality of library and information services.

The ALA applauds the Federal Communications Commission ("Commission") for its ongoing commitment to expand universal service of telecommunications services by supporting the Universal Service Program for Schools and Libraries, often referred to as the E-Rate. We strongly support the Commission's recent decision to fully fund the E-Rate program at \$2.25 billion for Year 2 and believe that it will improve the availability of these services in communities across the United States.

In this Further Notice of Proposed Rulemaking, the Commission has requested comments regarding the process by which the Schools and Libraries Division of the Universal Service Administrative Company (SLD) reviews, approves and releases funding for appeals. We appreciate the opportunity to comment on these important issues and strive to provide the perspective of library applicants in resolving these issues. In this document, we will support the following principles:

- A. The FCC should provide the SLD with rules that allow timely, accurate and useful responses to applicant's appeals;
- B. The FCC should provide the SLD with rules that provide a fair mechanism for all appealing applicants; and
- C. The FCC should offer program certainty to the SLD and to applicants.

The ALA believes these principles should be guiding factors in any decisions related to the appeals process. These principles are particularly important since the FCC is requesting comments on a process that has never been completed and, therefore, cannot be fully described or predicted.

## **II. Summary of Answers to Requests for Comment**

In applying these principles to the questions posed, we provide the following answers:

- 1) The FCC should apply the same rules of priority for the appeals process that are imposed on the regular process;
- 2) The FCC should allow funding for priority two service appeals only if the appealed service is at a discount level no less than the general fund's discount percentage;
- 3) The FCC rules should assure funding for successfully appealing applicants;
- 4) The FCC rules should allow the SLD to release funds to appealing applicants as quickly as possible;
- 5) The FCC should use appropriate funds from either year (current or next) to assure appeal funding; and
- 6) The FCC should limit installation of successfully appealed services to 6 months following the appeal.

## **III. Answers to Requests for Comment**

### **1) Applying the Same Rules of Priority**

In Paragraph 9, the Commission outlines its plan to establish rules that the SLD shall "first fund all priority one service appeals that have been granted and, if sufficient funds remain, shall allocate funds to internal connection appeals at each descending single discount percentage..." The ALA agrees with the process proposed in this paragraph because it is the same manner in which the SLD decides the general funding commitments. The process is known and is consistent with the priority decisions made by the FCC for the general funding process.

2) Establishing a Priority Two Threshold at the Same Level as the General Process

Also in Paragraph 9, the Commission establishes special rules for appealed Priority Two services (internal connections) that parallel the rules in the general process. Again, because the current rules require that the SLD not guarantee funding of Priority Two services in the general process and the applicant community is aware of this possibility, the ALA believes the rule established by this paragraph is fair as well.

3) Insufficient Funds Requiring Pro Rata Disbursement of Priority One Appeal Funds

In Paragraph 10, the Commission proposes a process by which the SLD may pro rate priority one appeals funds (funding for telecommunications and internal connections appeals) if funds are insufficient. The ALA is concerned about this scenario because of some of the assumptions that are made in recommending it. Contrary to the experience in the first year of the program, the Commission appears to be assuming that there will not be sufficient funds to address the appeals that are presented to the SLD.

The ALA respectfully submits that, under the principle of fairness and certainty, this should not be the case for two reasons. First, as the applicants and the program administrator become more sophisticated and can more easily understand and explain the intricate program rules and procedures, fewer appeals will be made. Anecdotal evidence suggests that many of the first year appeals revolve around interpretive disputes where the SLD has interpreted the eligibility of a piece of equipment or the configuration of a service differently from the applicant based on the limited information provided. Others are simply process errors that were caused by the fast-paced and hectic roll-out of the program with its simultaneous development. In both cases, these types of errors should diminish over time. This would cause less strain on the appeals process and require fewer funds to address these issues.

Second, if an applicant successfully appeals a decision, that would indicate that its application was correct. If the applicant was correct, its priority one services should have been equally treated in the general process and fully funded. By setting up the pro rata basis for funding these priority one services, the applicant is being penalized for the program Administrator's mistake.

Instead of pro-rating, the ALA believes that over time the Administrator will have a track record on which to base an appeals funding set-aside which does not currently exist. This set-aside would assure that successfully appealed services will be treated fairly and consistently within the application process. Perhaps unencumbered funds from the previous year will sufficiently cover the costs of these appeals. Perhaps the Administrator could purchase risk-based insurance to cover the costs in the unlikely event that funds are not sufficient to cover all priority one appeals. We believe other avenues must be pursued to assure fairness and certainty in the program.

- 4) The FCC rules should allow the SLD to release funds to appealing applicants as quickly as possible.

Also in Paragraph 10, the FCC proposes that the Administrator "wait until a final decision has been issued on all priority one service appeals before it allocates funds on a pro rata basis." Again, the ALA believes that because of the nature of the appeals process, appealed services should not be held hostage to funding uncertainty. ALA believes that the FCC has an obligation to assure successfully appealing applicants that they are treated in the same manner as applicants who did not have to appeal. Because of this belief, we recommend that the FCC allow the Administrator to send out funds for successful appeals as quickly as possible.

- 5) The FCC should use appropriate funds from either year (current or next) to assure appeal funding.

In Paragraph 10, the FCC asks for comment on whether it is more appropriate to use funds collected in the next funding year to fund priority one service appeals for the prior year. The ALA believes that the FCC should allow the Administrator flexibility to determine the most appropriate funding year. If a significant amount of funds become unencumbered due to applicants' inability to utilize the funds during the previous funding year, those might be appropriate funds to use to fund appeals. If, on the other hand, there are no unencumbered funds and assuming that the number of appeals remains proportionally low, some funds may be more appropriately obtained from the next funding year. These issues are likely to change as the program progresses and dictates a level of flexibility that does not appear to have been considered in the Notice of Proposed Rulemaking.

- 6) The FCC should limit installation of successfully appealed services to 6 months following the appeal.

In Paragraph 11, the FCC recognizes that appealing applicants may need additional time to install internal connections. However, it is possible that the scenario described in this paragraph would only occur if an appeal were decided very late in the funding year which the ALA strongly urges the FCC and the Administrator to avoid. Exceptionally delayed appeals decisions have occurred in Year 1 of the program and might occur in Year 2, although that remains unclear to the ALA at this time.

ALA anticipates that there may be a different scenario emerging as the SLD begins to move the application process forward to accommodate completion of all funding commitments by May prior to the funding year. If it is a fair assumption that the application process and funding commitments would be completed by May and appeals are addressed prior to or early in the funding year, it is possible that the internal connection installment would not occur until after the six-month period had passed.

For example, X library submits an application requesting discounts in Year 3 on an eligible router. The router installation is expected to occur in April of the funding year.

However, the Administrator denies funding for the router, X library appeals and wins by September of the funding year. If the FCC imposes a 6-month installation requirement, X library is forced to speed up its installation timetable unnecessarily.

This scenario is premised on extremely efficient work on the part of the applicant and the Administrator. While that may not be a fair expectation right now, due to the continuing start-up issues, it is a possible scenario in future years when the program becomes routine and streamlined with complete databases, simplified forms and simplified procedures. We urge the FCC to be sensitive to the installation requirements of the applicant and suggest that this may be accomplished by allowing installation to occur before the end of the program year or within six months of the final appeal decision, whichever is later.

#### **IV. Conclusion**

The ALA reiterates its appreciation for the support the Commission has provided to the Universal Service Program for Schools and Libraries. The Commission has provided extraordinary leadership during very difficult times. We stand ready to assist the Commission on these and other issues as the program moves forward.

Respectfully Submitted,

A handwritten signature in cursive script, reading "Carol Henderson", is written over a horizontal line.

Carol Henderson  
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June 22, 1999